

*United States Court of Appeals
for the Second Circuit*



APPELLEE'S BRIEF

74-2016

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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GEORGE BIDERMAN, et al, :
Plaintiffs-Appellants, :
-against- :
ROGERS C. B. MORTON, et al, :
Defendants-Appellees, :
-and- : Docket No. 74-2016
CONSTITUTIONAL RIGHTS COMMITTEE :
OF KISMET, : Calendar No. 292
Defendant-Intervenor- :
Appellant. :
-----X

BRIEF FOR DEFENDANTS-APPELLEES
CHARLES BARRAUD, THOMAS ROMEO
AND ALBERT CARNES (THE BROOKHAVEN
DEFENDANTS).



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INTRODUCTION

There are two appeals from portions of an Order
of the United States District Court for the Eastern District
of New York, of July 19, 1974 (Dooling, J.). As authorized
by Court Order, a typed brief is submitted.

Plaintiffs have instituted an environmental action to substantially restrict construction and vehicular traffic at the Fire Island National Seashore. The denial of a preliminary injunction to restrain construction was affirmed by this Court May 30, 1974. (73-2842).

Plaintiffs now appeal from so much of a subsequent Order as denied a motion for a preliminary injunction against the issuance of motor vehicle permits for use at the National Seashore, save for essential use to provide essential services. Although the motion is not so limited, plaintiffs' Memorandum of Law makes it clear that their motion is directed exclusively against the federal defendants

"Plaintiffs now seek relief against only the federal defendants pertaining to their control of federal land."

Plaintiffs' Memorandum, page 1.

The decision below is addressed exclusively to federal regulations as well. Therefore, the decision does not directly affect the Brookhaven defendants.

Intervenors appeal from so much of the Order as denies their motion for a preliminary injunction enjoining the federal defendants from refusing to issue motor vehicle permits on grounds not expressly specified in 36 C.F.R §7.20 and from interfering with vehicular traffic on Fire Island between the Robert Moses Causeway and the community of Kismet

along a certain route, all in the Town of Islip. This latter appeal does not concern Appellees Barraud, Romeo and Carnes, the Brookhaven defendants.

STATEMENT

As stated in the decision below, the evidence presented at the hearing indicates motor vehicle traffic has no significant effect on the environment at the Fire Island National Seashore.

"Fire Island is not now a prey to unregulated motor vehicle traffic. Motor vehicle traffic is not, as plaintiffs assert (Memo. p. 18), destroying the Seashore. That is not, on the evidence, the fact."

Decision, page 3.

No significant irreparable harm is occurring from vehicular traffic at the Seashore. The evidence failed to demonstrate compliance with this essential condition precedent to the granting of a preliminary injunction.

C O N C L U S I O N

THE ORDER SHOULD BE AFFIRMED.

Dated: September 10, 1974.

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STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Grace M. Shropshire, being duly sworn, deposes and says:

That deponent is not a party to the within action, is over eighteen years of age, and resides at Smithtown, New York. That on the 10 day of September, 1974, deponent served the within BRIEF FOR DEFENDANTS-APPELLEES CHARLES BARRAUD, THOMAS ROMEO AND ALBERT CARNES upon the following attorneys for said parties in this action at the addresses set forth alongside each name, the addresses designated for that purpose, by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

CLERK, UNITED STATES COURT OF APPEALS
United States Court House
Foley Square, Room 1702
New York, N. Y. 10007

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Grace M. Shropshire
Grace M. Shropshire

Sworn to before me this
10 day of September, 1974.

Leonarda A. Giaccone
Notary Public

LEONARDA A. GIACCONC
NOTARY PUBLIC, State of New York
No. 52-6502910, Suffolk County
Commission Expires March 30, 1976